

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Kevin Brathwaite,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1542-GMS
)	
Thomas Carroll, Warden, et al.,)	Trial by Jury Demanded
)	
Defendants.)	

STATE DEFENDANTS' MOTION TO DISMISS

The State Defendants, by and through undersigned counsel, hereby move this Honorable Court to enter an order dismissing Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12 (b) (6) for failure to state a claim upon which relief can be granted. In support of their Motion, Defendants offer the Memorandum of Points and Authorities filed simultaneously herewith.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters

Ophelia M. Waters, I.D. #3879
Deputy Attorney General
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
ophelia.waters@state.de.us
Counsel for State Defendants

DATE: July 18, 2005

CERTIFICATE OF MAILING AND/OR DELIVERY

The undersigned certifies that on July 18, 2005, she caused the attached *State Defendants' Motion to Dismiss* to be delivered to the following persons in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT(S):

Kevin C. Brathwaite
SBI #315294
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MANNER OF DELIVERY:

One true copy by facsimile transmission to each recipient
 Two true copies by first class mail, postage prepaid, to each recipient
 Two true copies by Federal Express
 Two true copies by hand delivery to each recipient

/s/ Ophelia M. Waters

Ophelia M. Waters, I.D. #3879
Deputy Attorney General
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
302-577-8400
ophelia.waters@state.de.us